IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1846 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PAPER CONES & BOBBINS FACTORY
Versus
UNION OF INDIA

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Appearance:
1. Special Civil Application No. 1846 of 1989
MR DG TRIVEDI for MR KS NANAVATI for Petitioner No. 1-2
MR HASMUKH C PATEL for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 22/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the

Constitution, the petitioner has challenged the appellate order dated 8.11.1988 passed by the Collector of Central Excise confirming the order-in-original dated 23.9.1987 passed by the Assistant Collector of Central Excise, Nadiad rejecting the claim for refund of Rs.17,299/- and another appellate order dated 13.2.1989 passed by the same appellate authority confirming the order-in-original dated 24.9.1987 passed by the same Assistant Collector dismissing the petitioner's refund claim of Rs.57,992/-.

2. As far as the first refund claim is concerned, the relevant facts are that the the petitioner filed on 23.3.1987 refund claim of Rs.97,950/- for the period from 1.9.1986 to 31.1.1987. The Assistant Collector granted refund claim of Rs.80,651/- for the period from 23.9.1986 to 31.1.1987, but rejected the refund claim of Rs.17,299/- for the period from 1.9.1986 to 22.9.1986 as time barred on the ground that the said part of the claim was made six months after the relevant period and was, therefore, time barred by the provisions of Section 11B(1) of the Central Excise Act. The order was confirmed by the appellate authority.

As far as the second refund claim is concerned, the petitioner had made the claim on 23.3.1987 for the period from 1.3.1986 to 30.8.1986 for Rs.57,992/-. The Assistant Collector rejected the entire claim as time barred for the same reasons as in the first matter. The appellate authority confirmed the order-in-original.

3. At the hearing of this petition today, Mr DG Trivedi, learned advocate for the petitioner has submitted that although the petitioner had specifically made submission on the basis of Rules 173F, 173G and 173I and contended that the actual assessment of duty is made on the RT 12 statement by the competent officer of the Central Excise when the monthly statements are filed by the assessee and that, therefore, the relevant date for the purposes of computation of limitation period for refund claim would be the date of the assessment made by the proper officer and not the date of actual payment. It is submitted that this submission, though recorded by the Assistant Collector, was not at all dealt with in the order-in-original and that even the appellate authority has also not dealt with the same. The Officer of the Central Excise department had finalized the RT 12 statement for the relevant period on 21.1.1987 and, therefore, the claim made on 23.3.1987 was well within the period of six months.

Similarly, in respect of the second refund claim

also, it is submitted that the department reconsidered the classification of the petitioner's product under sub-heading 4818.19 instead of 4818.90 and sent the telex intimation to that effect on 8.1.1987 and, therefore, the relevant date for the purposes of computation of limitation period for the refund claim would be the date of the telex i.e. 8.1.1987 and, therefore, the claim made on 23.3.1987 was rightly made within the period of six months. In this case also, the proper officer had finalized the RT 12 statement after receiving the telex on 8.1.1987 and, therefore, the refund claim was made within the period of limitation.

4. Mr Hasmukh C Patel, learned additional standing counsel for the Central Government has supported the orders of the respondent authorities and submitted that in view of the language of the provisions of the Explanation to Section 11B of the Central Excise Act, there cannot be any other interpretation of the expression the "relevant date" as the date of payment of duty.

5. Having heard the learned counsel for the parties, it appears to us that the controversy raised in this petition has already been considered by the Apex Court in the context of the applicability of the doctrine of unjust enrichment in light of the provisions of Sections 11A and 11B of the Act. In Hindustan Metal Pressing Works vs. Commissioner of Central Excise, Pune, (2003) 3 SCC 559, the Apex Court has considered the scheme of the Central Excise Rules, particularly Rules 173F, 173G and 173I and held as under :-

> "The assessee is entitled under Rule 173-F to determine his liability for duty on the excisable goods manufactured by him and to remove such goods on payment of duty on self-assessment in accordance with the provisions laid down in the Rules. But this is only the first step in making of the assessment. The proper officer is empowered to assess the duty on the goods so removed by the assessee and complete the assessment on the return filed by the assessee. A copy of the return so computed by the proper officer has to be sent to the assessee. The duty assessed and paid by the assessee on self-assessment will be set off against the duty assessed by the proper officer. If the duty paid (sic assessed) by the proper officer on final assessment is more than the duty determined and paid by the assessee, the assessee has to pay the

> deficiency by making a debit in the account-current within ten days of the receipt of the copy of the return from the proper officer. If the duty on final assessment payable by the assessee is less than what he has actually paid, the assessee is entitled to take credit in the account-current for the excess payment. No question of any show-cause notice under Section 11-A arises at this stage. The duty has to be paid by making adjustment in the account-current which has to be maintained by the assessee within ten day's time."

(emphasis supplied)

In the aforesaid decision, the Apex Court has also considered the decision of the Larger Bench of the Apex Court in Mafatlal Industries Ltd. vs. Union of India, (1997) 5 SCC 536 wherein the Court has held that any recoveries or refund consequent upon the adjustment made pursuant to the order of assessment will not be governed by Section 11-A or Section 11-B.

It, therefore, appears to us that since the respondent authorities have not considered the effect of the provisions of the aforesaid Rules and the submissions canvassed on behalf of the petitioner at the hearing before the Assistant Collector and the Collector of Central Excise (Appeals), it would be just and proper to set aside all the impugned orders and to remand the matter to the Assistant Collector, respondent No.2 herein, for rehearing the matter and for taking decision in accordance with law and in light of the aforesaid decisions of the Apex Court and any other relevant decisions as may be applicable to the facts of the case.

6. The petition is accordingly allowed. The impugned orders-in-original dated 23.7.1987 and 24.9.1987 (Annexure "D" and "G" respectively) passed by the Assistant Collector of Central Excise, Nadiad and the orders dated 8.11.1988 and 13.2.1989 (Annexure "E" and "H" respectively) passed by the Collector of Central Excise (Appeals), Bombay are quashed and set aside and the matter is remanded to the Assistant Collector of Central Excise, Nadiad for rehearing the matter and for deciding both the refund claims dated 23.3.1987 of the petitioner afresh in accordance with law and in light of the aforesaid decisions of the Apex Court and any relevant other decisions as may be applicable to the facts of the case.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

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